

No. 14113

United States
Court of Appeals
for the Ninth Circuit

UNITED TRUCK LINES, INC., a Corporation,
and OREGON - WASHINGTON TRANS-
PORT, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

DEC 9 1953

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

EDWARD REILLEY,

Columbia Building, Seattle, and

GEORGE A. LaBISSONIERE,

Arctic Building, Seattle,

For Oregon Truck Lines;

W. P. ELLIS,

Equitable Building, Portland,

For Oregon-Washington Transport; Ap-
pellants.

HENRY L. HESS,

United States Attorney;

VICTOR HARR and

JAMES MORRELL,

Assistants United States Attorney,

United States Court House,

Portland, Oregon;

WILLIAM L. HARRISON,

Attorney for Inter-State Commerce Commis-
sion,

1056 Flood Bldg.,

San Francisco, Calif.,

For Appellee.

In the United States District Court
for the District of Oregon

No. C-17,592

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNITED TRUCK LINES, INC., a Corporation,
and

OREGON-WASHINGTON TRANSPORT, a Cor-
poration,

Defendants.

INFORMATION

(49 USC 306(a)), (18 USC 2), (49 USC 322(a))

The United States' Attorney charges:

Count 1

On or about the 2nd day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of iron body valves by motor vehicle on public highways from Spokane, Washington, to the McNary Dam site, Umatilla County, Oregon, for the Hays Manufacturing Company, for compensation in the amount of \$18.63, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Com-

merce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 2

On or about the 3rd day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of 50 sacks of lumnite cement by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for the McNary Dam Contractors, for compensation in the amount of \$44.18, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 3

On or about the 4th day of January, 1952, in the State and District of Oregon, United Truck Lines,

Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of miscellaneous pipe fittings, valves, and gauges by motor vehicle on public highways from Spokane, Washington, to the McNary Dam site, Umatilla County, Oregon, for the Grinnell Company, for compensation in the amount of \$13.89, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 4

On or about the 8th day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of miscellaneous pieces of steel bars by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for the Pacific Machinery and Tool Steel Company, for compensation in the amount of \$64.07, without there being in force with respect to defendant a certificate

of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 5

On or about the 17th day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of asphalt felt sheathing and asphalt roofing paper by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for the McNary Dam Contractors, for compensation in the amount of \$169.79, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 6

On or about the 18th day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of a miscellaneous assortment of bolts, oilers and wood handles by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for Woodbury & Company, for compensation in the amount of \$10.67, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 7

On or about the 21st day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of steel pipe benders by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for Woodbury &

Company, for compensation in the amount of \$5.14, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 8

On or about the 23rd day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of iron bolts and steel welding rods by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for Woodbury & Company, for compensation in the amount of \$11.89, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 9

On or about the 30th day of January, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of rubber hose by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for Woodbury & Company, for compensation in the amount of \$9.02, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Count 10

On or about the 5th day of February, 1952, in the State and District of Oregon, United Truck Lines, Inc., defendant, a corporation, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle, and as such carrier, did transport a shipment of steel angles by motor vehicle on public highways from Portland, Oregon, to the McNary Dam site, Umatilla County, Oregon, for J. E. Haseltine &

Company, for compensation in the amount of \$93.14, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a)).

Oregon-Washington Transport, defendant, a corporation, well knowing the premises aforesaid, did knowingly and wilfully aid and abet said United Truck Lines, Inc., the said offense in the manner and form aforesaid to do and commit. (18 U.S.C. 2).

Dated at Portland, Oregon this 17th day of July, 1952.

HENRY L. HESS,

United States Attorney for
the District of Oregon;

/s/ VICTOR E. HARR,

Assistant United States Attorney.

[Endorsed]: Filed July 17, 1952.

[Title of District Court and Cause.]

RECORD OF ARRAIGNMENT AND
SETTING FOR TRIAL

October 10, 1952.

Now at this day come the plaintiff by Mr. Maurice V. Engelgau, Assistant United States Attorney, and the defendant Oregon-Washington Transport, a corporation, by Mr. W. P. Ellis, of counsel.

It Is Ordered that Mr. George A. LaBissoniere, be, and is hereby, permitted to appear specially in this cause on behalf of the defendant United Truck Lines, a corporation, pending his general admission to the bar of this court. Thereafter, the said defendants are duly arraigned upon the information herein, and for plea thereto, each of the defendants, above named, through its counsel, states that it is not guilty of the offenses charged in each of the ten counts of the information herein.

Thereafter, each of the defendants, through its counsel, waive trial by jury. Thereupon,

It Is Ordered that this cause be, and is hereby, set for trial before the Court Tuesday, December 9, 1952.

[Title of District Court and Cause.]

STIPULATION OF FACTS

(With Respect to Status of
Umatilla Company Ferry Service).

The parties hereto, by and through their respective counsel, have this 9th day of December, 1952, stipulated and agreed as to factual matters surrounding the operation of a ferry by the Umatilla Ferry, Inc., of Umatilla, Oregon. It is understood that, based upon the within stipulation, the only question presented to the court is to determine the legal status of said ferry.

I.

The issue involved here concerns the status of a ferry plying across the Columbia River between a point in the approximate vicinity of Plymouth (Benton County), Washington, and a point in the approximate vicinity of Umatilla (Umatilla County), Oregon. The ferry company does not hold a license, franchise, or certificate of any kind from any governmental body, agency, or otherwise. It is not regulated in any manner by any Federal, State, County or Municipal agency.

Statement of Facts

II.

The ferry is owned and operated by the Umatilla Ferry, Inc., an Oregon corporation. Its articles of incorporation were filed on January 21, 1948. The articles are herewith set forth verbatim, viz:

Articles of Incorporation of
Umatilla Ferry, Inc.

We, F. J. Stephens, Harry Rodenbaugh and James G. Pearson whose names are hereunto subscribed, do hereby associate ourselves together for the purpose of forming a corporation under and by virtue of the General Laws of the State of Oregon, in force for the formation of private corporations.

Article I.

The name of this corporation shall be Umatilla Ferry, Inc., and its duration shall be perpetual.

Article II.

The object of this corporation, and the business in which it proposes to engage is as follows:

To own and operate a ferry and to do a general ferry business for the purpose of carrying and transporting freight, passengers, baggage, mail and express and to do a general ferry business for hire and for toll; to purchase, construct, own, maintain and operate in connection therewith or otherwise, ferries, vessels, ships, barges, docks, slips and landings and discharging places for freight, and passenger traffic; to purchase, sell, lease, hold and operate all classes of real estate and to construct any and all kinds of improvements thereon or to be used in connection therewith and to purchase, sell, hold, control and operate easements, franchises, roads and rights of way and to construct and build, erect, maintain, lease, sell or otherwise dispose of plants; for the maintenance and repair of motors, machinery mechanical devices of every kind and nature for the furtherance of the purpose herein stated; and to buy and sell all kinds of property, both real and personal, to own, handle and control letters patent and inventions; to borrow money, issue bonds, promissory notes and other evidences of indebtedness; to own, buy, mortgage, hypothecate, pledge, or otherwise deal in and with property of all kinds as well as capital stock and shares of this corporation; and to vote any shares owned by it the same as a natural person might do and to enter into such agreements, contracts and stipulations and make such arrangements as may be or

seem necessary to carry out the same and attain the objects and purposes herein expressed and intended.

The corporation shall possess in addition to the things hereinbefore set forth all the powers necessary to conduct the business or businesses and carry out the objects herein expressed and all those expressly conferred upon corporations by and enumerated in the Oregon statutes, together with all other powers bestowed upon such corporations under any of the laws of the State of Oregon as well as those necessarily implied

Article II-A.

That the termini of such navigation and ferry and the points between such ferry will operate are as follows:

Between a point near the Town of Umatilla in Umatilla County, Oregon, on the banks of the Columbia River which point is described as follows:

Beginning at a point 425 feet East of the "Y" on that certain tract of land situated in Sections 8 and 9, Township 5 North, Range 28 E., W. M., and more particularly described as that island or off-shore property which is bounded by elevation line 270 and bearing the symbol "D. S. Willow" on the map prepared by the United States Army Engineers in "February-April, 1935," being Sheet No. 52 of Upper Columbia River, Celilo to Snake River, and at a point on the North side of the present highway running Easterly and Westerly across said tract which point is the point of beginning, thence South $46^{\circ} 39'$ West 60 feet, thence North $39^{\circ} 44'$ West 142.6 feet, thence North $53^{\circ} 10'$ East 60 feet,

thence South 39° 20' 146.2 feet to the point of beginning.

And a point on the Washington side of said Columbia River in the County of Benton, State of Washington, at or near the Town of Plymouth, described as follows:

That portion of government lot four (4), section eight (8), township five (5) north, range twenty-eight (28) east, W.M., lying south of right of way of Spokane, Portland and Seattle Railway Company.

10 $\frac{1}{2}$ acre tract to east of and adjoining tract "A" of Second Addition to Town of Plymouth, described as follows:

Beginning at southeast corner of Tract "A"; thence North 695 feet to northeast corner of Tract "A"; thence east and along north line of Tract "A" produced a distance of 696 feet; thence south and parallel with east line of Tract "A" 620 feet more or less to meander line of Columbia River; thence along meander line of river 696 feet more or less to point of beginning, in section 8, township 5 north, range 28 east, W.M.

Article III.

The principal office and place of business of this corporation shall be at the city of Umatilla in the county of Umatilla, and state of Oregon.

Article IV.

The capital stock of this corporation shall be Twenty-five Thousand and no/100 dollars.

Article V.

The capital stock shall be divided into Two Hundred Fifty (250) shares and the par value of each share shall be One Hundred and no/100 dollars.

In Witness Whereof, we have hereunto set our hands and seals this 12th day of January, A. D. 1948.

[Seal] /s/ FRANCIS J. STEPHENS,

[Seal] /s/ HARRY RODENBAUGH,

[Seal] /s/ JAMES G. PEARSON.

State of Oregon,
County of Umatilla—ss.

This Certifies, that on this 12th day of January, A.D. 1948, before me, the undersigned, a notary public in and for said county and state, personally appeared F. J. Stephens, Harry Rodenbaugh and James G. Pearson, known to me to be the identical persons named in and who executed the foregoing articles of incorporation, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and seal, the day and year last above written.

/s/ C. C. PROEBSTEL,

Notary Public for Oregon.

My commission expires 3/4/49.

III.

Pursuant to its articles, the corporation holds, under a de facto arrangement with the Port of Umatilla and Oregon State Land Board, a plot of land extending from the ferry landing to a Umatilla County highway—a distance of some 500 feet. A portion of this land is improved by the ferry company and provides the only means of ingress and egress of vehicular traffic between the ferry landing and the county highway. Likewise, the ferry company holds a lease to lands on the Washington side extending from the ferry landing to a county highway—a distance of some 1500 feet. A portion of this land is improved and maintained by the ferry company for vehicular traffic.

IV.

Washington State Highways 8 and 8E traverse the Washington side of the river to and north of Plymouth. On the Oregon side U. S. Highway 730 traverses the town of Umatilla. The Umatilla county highway connects with U. S. No. 730 and extends toward and passes within 500 feet of the Columbia River.

V.

The ferry company has posted signs in both Oregon, on U. S. Highway No. 730, and in Washington, on Highways 8 and 8E, all visible to the travelling public, denoting as follows:

(On the Oregon side)

Umatilla Ferry

All Points

North-West

Umatilla Ferry

Short Route to Spokane— $\frac{1}{4}$ Mi.

11 Miles

Umatilla Ferry

Short Cut

Spokane

Via Pasco

16 Miles

Umatilla Ferry

Short Cut

North-East

(On the Washington side)

Ferry

U. S. No. 30

Pendleton

[Arrow point to right]

Umatilla Ferry

[Arrow point to right]

Umatilla, Oregon

(At landing slip on Oregon side)

Please Stop Here

24 Hrs.

Service

The Oregon State Highway Commission has posted the following directional markers:

1.

Richland
Plymouth
Umatilla Ferry
Toll Ferry

2.

Umatilla Ferry
Junction Ahead

VI.

During the month of January, 1952, the ferry transported 5,522 one-way crossings of passenger cars, and 300 one-way crossings of trucks. During the month of October, 1952, it transported 10,034 one-way crossings of passenger cars, and 550 one-way crossings of trucks.

VII.

The ferry company charges a uniform toll in an amount of \$1.00 per passenger car, and a uniform fee for trucks based upon the number of axles.

VIII.

The ferry company pays a transportation tax to the United States Treasury Department. For the month of January, 1952, the tax amounted to \$119.68. For the month of October, 1952, the tax amounted to \$240.32.

IX.

As far as pertinent here, United Truck Lines, Inc. (hereinafter called United) is authorized by the Interstate Commerce Commission to serve all points in Benton County, Washington. It is not specifically authorized by its certificate to serve any point in Umatilla County, Oregon, nor any part of

the McNary Dam site reservation in Oregon, part of which lies in Umatilla County.

The Commission has recognized that a carrier may serve areas beyond an authorized point if only private ways are used in the beyond operation, but the private way must be entered from an authorized point or area.

X.

United, by permission of the ferry company and Bonneville Power Administration, constructed its own roadway extending from the ferry landing (on the Oregon side) eastward along the Columbia River to the damsite reservation—a distance of some 1,000 feet.

XI.

One or more of the shipments described in the information herein moved via the ferry and over the private roadway here described to a point in the McNary damsite in Oregon.

.....

U. S. Attorney;

/s/ VICTOR E. HARR,

Assistant U. S. Attorney;

/s/ WILLIAM L. HARRISON,

Atty., Interstate Commerce Commission, Attorneys for Plaintiff.

/s/ EDWARD REILLEY,

/s/ GEORGE R. LaBISSONIERE,

/s/ WM. P. ELLIS,

Attorneys for Defendants.

[Endorsed]: Filed December 9, 1952.

[Title of District Court and Cause.]

ORAL OPINION

January 26, 1953.

An Information was filed against the defendants containing 10 counts, and in each count it is charged that the defendants knowingly and wilfully engaged in interstate operation on a public highway as a common carrier by motor vehicle in violation of § 306(a) Title 49 U.S.C. Each of the defendants has filed a motion to dismiss. It is admitted that the defendant, United Truck Lines, is a certified carrier in the State of Washington, but is not certified in the State of Oregon. The shipments here in controversy were transported by the defendant, United Truck Lines, over the public highway in the State of Washington and a two-way ferry, which crosses the Columbia River, between a point near Plymouth, Washington, and Umatilla, Oregon. Upon arriving on the Oregon side of the Columbia River, the trucks used a private road for the balance of the trip.

The issue involved in this case depends upon the status of the ferry crossing the Columbia River. The parties have entered into a stipulation in which the facts surrounding the ownership and operation of the ferry were agreed upon. I have considered the authorities submitted by both parties in the light of such stipulation and I find that, even though

the ferry operates without a franchise and operates from approaches on both the Oregon and Washington sides of the Columbia, which are on private property, the ferry is a public highway within the meaning and intent of § 206(a), Part II of the Interstate Commerce Act.

The motions to dismiss are therefore denied.

[Title of District Court and Cause.]

ORDER

January 26, 1953.

Now at this day the Court renders its opinion herein.

It Is Ordered that the motion for dismissal of this cause be, and is hereby, denied.

[Title of District Court and Cause.]

ORAL OPINION

August 28, 1953.

An information containing 10 counts was filed against the defendants. In each count it is alleged that United Truck Lines, Inc., did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle in violation of § 306(a) Title 49 United States Code. Each count further alleged that the defendant Oregon-Washington Transport did knowingly and wilfully aid and abet defendant United Truck Lines, Inc.

On January 26, 1953, I denied the motions made by both defendants to dismiss the information and held that the ferry used by the defendants in crossing the Columbia River was a public highway within the meaning and intent of § 306(a) of the Interstate Commerce Act.

The certificate of defendant United authorizes it to serve the State of Washington upon those routes

which parallel the Columbia River. It is also authorized to serve the City of Portland, Oregon.

The shipments, which formed the basis of most of the counts in the information, commenced at Portland and were transported across the Columbia River to Vancouver, Washington; then up the Washington side of the Columbia River to Plymouth at which point a ferry was utilized to recross the Columbia River. The ferry on the Oregon side docked on property of the United States Government, namely, Umatilla Island, and United's trucks proceeded from that point via a private road to the point of destination, the McNary dam site, which is also on Government property.

At the trial the defendants made three contentions:

First, that the defendants at no time, after leaving the Washington shore, operated upon an area over which the Commission had jurisdiction because the Government reservation extends to the border of the State of Washington and not merely to the Oregon shore of the Columbia River.

Second, that, even if the court finds that the Government reservation extends only to the Oregon shore of the Columbia River, the transportation by the defendants after leaving the Washington shore is not subject to the jurisdiction of the Commission because the point at which the ferry docked was United States' property and defendant proceeded directly therefrom to the dam site by use of a private road.

Third, that, even if such transportation were of an interstate character, the defendant United did not continue to carry the freight shipment beyond its certificated jurisdiction for the reason that trucks so used were being operated by the Oregon-Washington Transport, Inc., from Plymouth, Washington, to the dam site under the latter's certificate.

At the conclusion of the trial, I indicated that the alleged lease agreement between the defendants, by which Oregon-Washington Transport, Inc., is alleged to have completed the carriage of goods from Plymouth, Washington, to the dam site, was merely a paper transaction and not a bona fide lease. After having considered the evidence at the trial, I am firmly convinced of that fact, and I now so hold.

The remaining question is whether the defendant, in crossing the Columbia River by a ferry which docks on Umatilla Island and by proceeding from that point to the dam site by way of a private road, violates section 306 of the Act.

In my view, it is immaterial whether the Columbia River at such point was:

(1) wholly within a Government reservation, or

(2) partially within the territorial boundaries of the State of Washington and partially within a Government reservation, or

(3) partially within the territorial boundaries of the State of Oregon,

for the reason that I have previously found that the ferry, crossing at such point and used by the

defendant United, was a public ferry and therefore a public highway.

Section 306(a) prohibits the operation of a motor carrier without authority on "any public highway or within any reservation under the exclusive jurisdiction of the United States."

Therefore defendants are subject to the jurisdiction of the Commission and must be certificated whether the public highway is deemed to cross Oregon territory or a Federal reservation.

[Title of District Court and Cause.]

TRANSCRIPT OF FINDINGS
AND JUDGMENT

May 28, 1953.

Now at this day come the plaintiff by Mr. James Morrell, Assistant United States Attorney, and Interstate Commerce Commission by Mr. William Harrison, of counsel, and the defendant United Truck Lines by Mr. Edward Reilley and Mr. George LaBissoniere, of counsel, and Oregon-Washington Transport by Mr. William Ellis, of counsel. Whereupon, this cause comes on for trial before the Court, and the Court having heard the evidence adduced, at the close of plaintiff's case, plaintiff having rested, defendant moves the Court for judgment of acquittal, and the Court having heard the statements of counsel,

It Is Ordered that said motion be, and is hereby, denied.

Thereafter, the Court having heard the statements of counsel, will advise thereof.

It Is Ordered that the respective parties hereto file their briefs by June 15, 1953.

District Court of the United States
District of Oregon

No. C-17,592

UNITED STATES,

vs.

UNITED TRUCK LINES, Incorporated, a Corporation, and OREGON - WASHINGTON TRANSPORT, a Corporation.

JUDGMENT AND COMMITMENT

Criminal Information in Ten Counts for Violation of U.S.C., Title 49, Secs. 306(a) 322(a).

On this 28th day of August, 1953, came James W. Morrell, Assistant United States Attorney, and the defendant United Truck Lines, incorporated, appearing by George R. LaBissoniere, of counsel;

The defendant having been convicted on the finding and judgment of the Court of Guilty of the offenses charged in the information in the above-entitled cause, to wit: knowingly and wilfully engaging in an interstate operation on a public highway as a common carrier by motor vehicle in violation of Sec. 306(a), Title 49, USC, as charged in Counts One to Ten, inclusive, and the defendant

having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, do pay a fine of Fifty Dollars on each of Counts One to Ten, inclusive, or a total fine of Five Hundred Dollars.

/s/ GUS J. SOLOMON,

United States District Judge.

[Endorsed]: Filed August 28, 1953.

District Court of the United States
District of Oregon

No. C-17,592

UNITED STATES,

vs.

UNITED TRUCK LINES, Incorporated, a Corporation, and OREGON - WASHINGTON TRANSPORT, a Corporation.

JUDGMENT AND COMMITMENT

Criminal Information in Ten Counts for Violation of U.S.C., Title 18, Sec. 2.

On this 28th day of August, 1953, came James W. Morrell, Assistant United States Attorney, and the defendant Oregon-Washington Transport, appearing by William P. Ellis, of counsel.

The defendant having been convicted on the finding and judgment of the Court of Guilty of the offenses charged in the information in the above-entitled cause, to wit: knowingly and wilfully aiding and abetting the United Truck Lines to violate Sec. 306(a), Title 49, United States Code, as charged in Counts One to Ten, inclusive, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, do pay a fine of Ten Dollars on each of Counts One to Ten, inclusive, or a total fine of One Hundred Dollars.

/s/ GUS J. SOLOMON,

United States District Judge.

[Endorsed]: Filed August 28, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Clerk of the District Court:

Comes Now, United Truck Lines, Inc., East 915 Springfield Avenue, Spokane, Washington, through its attorney, George R. LaBissioniere, and Oregon-Washington Transport, Inc., 1231 N. W. Hoyt, Portland, Oregon, through its attorney, William P. Ellis, and hereby appeals from the judgment of the

honorable Gus J. Solomon, entered in the above-entitled cause on August 28, 1953.

Defendant, United Truck Lines, Inc., was charged in an information contained in ten counts with knowingly and wilfully engaging in an Interstate operation on a public highway, as a common carrier by motor vehicle, in violation of Section 306(a), Title 49 of the United States Code. Defendant, Oregon-Washington Transport, Inc., was charged in each of the same ten counts with knowingly and wilfully aiding and abetting defendant, United Truck Lines, Inc.

The judgment of August 28, 1953, found the defendants guilty on each of the ten counts charged in the information, and imposed a fine of \$50 for each count on the defendant, United Truck Lines, Inc., and \$10 for each count on the defendant, Oregon-Washington Transport, Inc.

The principle contention of the defendants at the trial was that the transportation performed was not subject to the jurisdiction of the Interstate Commerce Act, because it was not performed entirely over a private ferry and therefore could not be a public highway within the meaning of Section 306 (a), Title 49, of the United States Code.

However, Honorable Gus J. Solomon, in his oral opinion found that the above-mentioned ferry was a public ferry and therefore a public highway, hence constituting transportation over a public highway within the meaning of 306(a), Title 49 of the United States Code.

The above-entitled defendants hereby appeal from each and every ruling, order or finding contained in said judgment.

/s/ GEORGE R. LaBISSONIERE,
Attorney for Defendant,
United Truck Lines, Inc.

/s/ WILLIAM P. ELLIS,
Attorney for Defendant, Oregon-Washington
Transport, Inc.

[Endorsed]: Filed September 4, 1953. U.S.D.C.

[Endorsed]: Filed September 10, 1953. U.S.C.A.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, F. L. Buck, Acting Clerk, United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of information, record of arraignment and setting for trial, stipulation of facts, order denying motion for dismissal, record of trial before the court, judgment and sentence of United Truck Lines, judgment and sentence of Oregon-Washington Transport, bond on appeal, designation of record on appeal, statement of points, stipulation to extend time to file record, order extending time to file record on appeal, and this certificate, constitute the record on appeal from

the judgments and sentences in a cause therein numbered C-17,592, in which the United States of America is Plaintiff and Appellee, and the United Truck Lines, Inc., a corporation, and Oregon-Washington Transport, a corporation, are defendants and appellants; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellants, and in accordance with the rules of this court.

I further certify that there is enclosed herewith a copy of the court's oral opinion of August 28, 1953, which is not filed in this case.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellants.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 31st day of October, 1953.

[Seal] /s/ F. L. BUCK,
Acting Clerk.

[Endorsed]: No. 14113. United States Court of Appeal for the Ninth Circuit. United Truck Lines, Inc., a corporation, and Oreon-Washington Transport, a corporation, Appellant, vs. United States of America, Appellee. Transport of Record. Appeal from the United States District Court for the District of Oregon.

Filed November 2, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14,113

UNITED TRUCK LINES, INC., et al.,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellees.

STATEMENT OF POINTS

The points upon which appellant will rely on appeal are:

1. The trial court was in error in holding that the operation from the Washington boundary at the middle of the Columbia River to the Umatilla Island Government Reservation on the Oregon shore was conducted over a public highway within the meaning of Section 206(a) of the Interstate Commerce Act.

/s/ GEORGE R. LaBISSONIERE,
Attorney for Appellant.

[Endorsed]: Filed November 12, 1953.

